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Ms. Mary Nichols, Chair
California Air Resources Board
1001 I Street
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**RE: Sempra Energy comments on the CARB's Proposed Assembly Bill 32 ("AB 32")
Administrative Fee Regulation**

Sempra Energy ("Sempra") recognizes a fee structure will be adopted to recover CARB and other public agencies' administrative costs associated with the implementation of AB 32. Sempra appreciates the opportunity to discuss its concern that the draft regulation incorrectly defines upstream entities as sources of greenhouse gas ("GHG") emissions. Sempra also offers discussion on an alternative fee structure and its recommendations on imposing the fee on GHG emissions from electricity imports.

Definition of Sources of Greenhouse Gas Emissions

Sempra agrees with the comments offered by other public gas corporations that the Draft Regulation currently defines "any operator of a public utility gas corporation operating in California" as a source of statewide greenhouse gas emissions (GHG), as defined in California Health and Safety Code ("HSC"), Section 38505. Section 38505 defines greenhouse gas sources as "any source or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit."

An operator of a public utility gas corporation is not a "source of statewide greenhouse gas emissions." A public utility gas corporation transports natural gas from a point of origin to end-users of that natural gas where combustion and emission of GHGs ultimately occurs. Except for small amounts of natural gas consumed in transport and limited fugitive emissions from pipelines and gas processing facilities, virtually all sources of GHG emissions from the gas sector are associated with the end-users of natural gas.

Sempra Energy therefore requests the language in the Draft Regulation be clarified to state a public utility gas corporation is an entity upstream from the source of GHG emissions, not the actual source of GHG emissions.

Upstream Fee Collection Proposal

CARB has indicated, in discussions, that it wants to maximize the number of participants in the Administrative Fee revenue structure and CARB has indicated its desire to maintain administrative simplicity by applying the fee upstream. CARB is relying on the assumption that upstream entities can pass along the costs to the actual sources of GHG emissions. Sempra feels the process involved for assessing this fee is administratively difficult. In keeping with the intent of the AB 32 statute, Sempra recommends that the CARB collect the fee directly from the emission sources. An alternative method to CARB's proposal is to track the emissions sources identified in the CARB reporting regulation. As recommended by other stakeholders, the CARB could collect from entities identified in this regulation as well as sources of emissions that fall below the reporting threshold such as transportation.

Likewise, Sempra believes the regulation should be clarified to ensure it applies on equal terms to all natural gas utilities, including municipal gas utilities, which deliver gas to retail end-users. Sempra offers a suggested change to Section 95202 (a) (64):

"Public Utility Gas Corporation" is a gas corporation defined in California Public Utilities Code Section 222 that is also a public utility as defined in California Public Utilities Code Section 216 [, *and any publicly owned utility that provides natural gas to retail end-users.*]"

Electricity Imports

As required by the AB 32 statute, Sempra Energy believes that electricity imports need to be included in this fee program. AB 32 requires CARB to "account for greenhouse gas emissions from all electricity consumed in the state, including ... electricity... imported from outside the state." (Health and Safety Code 38530(b)(2)).

The fee should be payable by the "deliverer" as defined in the "Interim Opinion on Greenhouse Gas Regulatory Strategies" (California Public Utilities Commission (CPUC) / California Energy Commission (CEC), D. 08.03-018, March 13, 2008). In that decision, the CPUC/CEC found that requiring deliverers to account for GHG emissions embedded in electricity imports would not violate the Commerce Clause (*ibid.*, Conclusions of Law 19 and 20). CARB can implement and enforce such payments through elements that will be used in the CARB and Western Climate Initiative cap-and-trade programs.

Fees can easily be levied on emissions from "specified" electricity imports where the source of the electricity can be assigned through Renewable Energy Certificates, ownership, or contracts. Importantly, if the "deliverer" of an out-of-state resource is required to pay a similar fee at its locale, the "deliverer" should not be assessed the California fee.

A default emission rate can be assigned to "unspecified" resources, or those for which the source of electricity cannot be assigned, until such time as CARB has adopted, on the basis of an appropriate study and analysis, "default" emission rates to be applied to electricity from "unspecified" sources. Sempra Energy agrees that CARB should convene a workshop to discuss "default" emission rates to be applied to electricity from "unspecified" sources. WCI plans to address default rates in 2009, but

may not develop recommendations for boundaries within the WCI, such as the California/Oregon border or the California/Arizona border.

Sempra Energy appreciates the opportunity to comment on the CARB's draft regulation.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Edie Chang', written in a cursive style.

c: Edie Chang
Jon Costantino
Jeannie Blakeslee
Bruce Tuter
Bill Knox